(1) (6)

CF 1001

IN THE HIGH COURT OF CHHATTISGARH, AT - BILASPUR

Writ Petition (Service) No. 1215 OF 2007

PETITIONER :- LAKHAN LAL YADAV,
AGED – 40 YEARS,
SON OF PANCHU YADAV,
WORKING AS – CHOWKIDAR,
AT – JANPAD PANCHAYAT, ABHANPUR,
DISTRICT – RAIPUR (C. G.)
R/O ABHANPUR, DISTRICT - RAIPUR (C. G.)

VERSUS

RESPONDENTS : -

1. **STATE OF CHHATTISGARH**,
THROUGH – THE SECRETARY,
PANCHAYAT & RURAL DEVELOPMENT
DEPARTMENT, MANTRALAYA D. K. S.
BHAWAN, RAIPUR (C. G.)
2. **DEVELOPMENT COMMISSIONER**,
CHHATTISGARH,
H. Q. – RAIPUR (C. G.)
3. **THE COLLECTOR**,
DISTRICT – RAIPUR (C. G.)
4. **CHIEF EXECUTIVE OFFICER,**
JANPAD PANCHAYAT, ABHANPUR,
DISTRICT – RAIPUR (C. G.)
5. **PUNU RAM YADAV,**
CHOWKIDAR CUM FARRASH,
JANPAD PANCHAYAT, PALLARI,
DISTRICT – RAIPUR (C. G.)
6. **LACHCHHI RAM**
CHOWKIDAR CUM FARRASH
JANPAD PANCHAYAT, PITHOURA,
DISTRICT – MAHASAMUND (C. G.)

Pet. No. 1422/07 Rajkumar Gupta
Presented on 20/12/07

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OATH COMMISSIONER
G.P. Kaushik
BILASPUR TAHSIL AREA

Writ Petition U/A – 226 of Constitution of India

(49)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 1215 of 2007

Petitioner: Lakhan Lal Yadav

Versus

Respondents: State of Chhattisgarh an others

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri**.

Present: Mr. R.K. Kesharwani, Advocate for the petitioner.
Mr. Vinay Pandey, Panel Lawyer for the State/ respondents.

O R D E R

(Passed on 1st day of March, 2007)

The following order of the Court is passed by **Satish K. Agnihotri, J.**

1. By this petition, the petitioner challenges the validity of the impugned order dated 30.12.1997 (Annexure P-7), whereunder the regularization of the petitioner, earlier granted, was cancelled.

2. The indisputable facts in nutshell are that the petitioner was appointed vide order dated 8.1.1987 (Annexure P-1) at Collector's rate for 89 days as Chowkidar-cum-Farrash. Thereafter, the service of the petitioner was continued in the same capacity after 2 or 3 days break in between. The petitioner was granted regular pay scale vide order dated 4.12.1993 (Annexure P-2).

3. The petitioner has filed this writ petition after a period of about 9 years without stating any reasons for inordinate delay. At this

stage, the case of the petitioner cannot be considered so asto disturb placement of other similarly situated employees and further to impose heavy burden on the exchequer. Even otherwise, the application of the petitioner was not in accordance with the Constitutional scheme of the employment. The petitioner was not appointed through open selection by inviting applications from other similarly situated candidates. The petitioner has no right to the post in view of catena of decisions laid down by the Hon'ble Supreme Court.

4. Learned counsel appearing for the petitioner relied on observation of the Hon'ble Supreme Court in the case of **State of Madhya Pradesh and others Vs. Yogesh Chandra Dubey and others**[1] to the effect that the case of the petitioner be considered for regularization.

5. The Supreme Court in case of **State of Madhya Pradesh and others Vs. Yogesh Chandra Dubey and other** observed as under:

> "10. It is neither in doubt nor in dispute that the respondents were not appointed in terms of the Statutory Rules. Their services were taken by the officers only to meet the exigencies of situation. No post was sanctioned. Vacancies were not notified. It is now trite that a State within the meaning of Article 12 of the Constitution of India, while offering public employment, must comply with the constitutional as also statutory requirements. Appointments to the posts must be made in terms of the existing rules. Regularization is not a mode of

appointment. If any recruitment is made by way of regularization, the same would mean a back-door appointment, which does not have any legal sanction."

"12. A person, who had been appointed by a State upon following the Recruitment Rules, enjoys a status. A post must be creatd and/or sanctioned before filling it up. The question recently came up for consideration in M.P. Housing Board and another Vs. Manoj Shrivastava [2006)2 SCC 702], wherein it was held:-

> "33. for the purpose of this matter, we would proceed on the basis that the 1961 Act is a special statute vis-à-vis the 1973 Act and the Rules framed thereunder. But in the absence of any conflict in the provisions of the said Act, the conditions, of service including those relating to recruitment as provided for in the 1973 Act and the 1987 Rules would apply. If by reason of the latter, the appointment is invalid, the same cannot be validated by taking recourse to regularization. For the purpose of regularization which would confer on the employee concerned a permanent status, there must exist a post. However, we may hasten to add that regularization itself does not imply permanency. We have used the term keeping in view the provisions of the 1963 Rules."

It was further opined:

> "The appointment made by a person who has no authority therefore would be void. A *fortiori* an appointment made in violation of the mandatory provisions of the statute or constitutional obligation shall also be void. If no appointment could be made in terms of the statute, such appointment being not within the purview of the provisions of the Act, would be void; he cannot be brought within the

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cadre of permanent employees. The definitions of "permanent employee" and "temporary employee" as contained in the Rules must, thus, be construed having regard to the object and purport sought to be achieved by the Act."

6. In view of the above stated decision, it was submitted by the counsel that the State be directed to take steps to fill up the vacant posts, if any, in accordance with law, in which event, the case of the petitioner may also be considered together with other eligible candidates. However, age bar, if any, to the extent they had worked with the respondent/State.

7. The petitioner has filed this petition after a long inordinate and unexplained delay of over 9 years. The petitioner has not been able to produce or submit any reasons for condonation of such a long delay in filing this petition.

8. It is well settled that High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic as the belated approach may have the effect of inflicting not only hardship as inconvenience but also injustice on third parties. {See ***Jagdish Narain Maltiar Vs. The State of Bihar & others***[2], ***P.S. Sadasivaswamy Vs. State of Tamil Nadu***[3], ***State of M.P. & others Vs. Nandlal Jaiswal and others***[4], ***Burn Standard Co. Ltd. & others Vs. Dinabandhu Majumdar & another***[5] ***and Karnataka Power Corporation Ltd. through its Chairman & Managing Director & another Vs. K. Thangappan & another***[6]}.

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9. As a result and for the aforesaid reasons, the writ petition is dismissed as not maintainable on the ground of delay in approaching this Court.

Sd/-
Satish K. Agnihotri
Judge

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1 (2006 (4) M.P.H.T. 321 (SC))
2 AIR 1973 SC 1343
3 AIR 1974 SC 2271
4 (1986) 4 SCC 566
5 (1995) 4 SCC 172
6 (2006) 4 SCC 322

Subhash